IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION No. 2290 of 2005.

Col. D. N. Sharma(Rtd).. **Petitioner** .

Vs.

The State [C.B.I.] **Respondent** .

Shri. L.A. Gadade for the Petitioner.

CORAM : S.R. DONGAONKAR, J.
DATE : MARCH 23, 2006.

P.C.

. Heard.

. The petitioner filed this petition under the Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973 for claiming the relief of handing over keys of the flat owned by him bearing No.D-506, Dara Enclave, A.W.H.O.,Sector-9,Nerul Navi Mumbai by the C.B.I.[respondent] in an investigation of R.C.No.6/E/99 [Spl.Case No. 21 of 2002] which was registered against the absconding accused Abhinav Singh who is still absconding.

. It may be stated that an investigation in a criminal case is pending against the said Abhinav Singh who is absconding in the said R.C. No.6/E/99 registered by C.B.I.[W], Navi Mumbai. He is a proclaimed offender. The said flat was given in possession of Abhinav Singh by the

petitioner who is absolute owner of the same, for the period of eleven months on leave and licence basis, which was to expire some time in the year 2000. It is claimed that the petitioner is now in dire need of the said premises for the various reasons stated in the petition. It may be stated that the C.B.I., has sealed the said flat alongwith the articles therein in the said investigation in pursuant to

[C the proceedings of search warrant, etc.

. Thereafter, when flat is sealed, in the year 2000, the petitioner has preferred the application before the learned Special Judge/Court of Sessions, Greater Mumbai under Section 457 of the Code of Criminal Procedure for returning of the keys of the flat. However, that application was rejected.

. On perusal of the impugned order of the learned Sessions Judge, it appears that the learned Sessions Judge was of the view that the petitioner should have preferred the civil remedies. According to him, no amount of indemnity can ever repair the loss of possession to the accused in the event of handing over the possession of the flat in case breach committed by the applicant.

. Against the rejection of this application by the order dated 6.2.2002 of the Sessions Judge, Greater Mumbai, this revision has been preferred.

. The learned counsel for the petitioner had submitted that as the alleged licensee Abhinav Singh is the proclaimed offender and was not found anywhere, no civil proceedings can be taken against him. Further he has pointed out that the term of the licence granted to him, has already been expired long back. He is not turning up. Therefore, on execution of the appropriate bond keys and possession of the flat of the said premises should be handed over to him.

. The learned counsel for the respondent, C.B.I., has no objection for the same. In this case, the proclaimed offender Abhinav Singh does not appear to be served. The flat is under the control of respondent/C.B.I. The petitioner is ready to furnish undertaking that he will not create any transfer and encumbrance. He is ready to furnish Indemnity Bond of the amount as per the Court order and also undertaking to deliver the possession of the flat to the licencee if he turns out lateron. In these circumstances,to secure the ends of justice and

more so, as there is no dispute that the petitioner is the landlord of the said flat and he is unable to take out proceedings against the proclaimed offender Abhinav Singh, even after expiry of his licence, the action under Section 482 of the Code of Criminal Procedure would be warranted.

. In the circumstances, this petition needs tobe allowed. The keys of the flat owned by the petitioner be handed over to him by the respondent on furnishing acknowledgement and Indemnity bond of Rs.5,00,000/- in favour of C.B.I. to hand over the possession of the said flat to the respondent as and when directed by it. undertaking of the petitioner to this Court shall also be submitted that he be deliver possession of the same to the proclaimed offender/licencee, Abhinav Singh as and when he appears and claims for the same,without claiming any right as per this order.

. Needless to state that panchnama of the articles available and present in the flat shall be made stating values thereof by the C.B.I. and in presence of the petitioner for record.

. The copy of the bond executed by the petitioner in favour of the respondent may be

produced for the purpose of record of this case

in the trial Court.

S . R. DONGAONKAR, J.